

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE, 1998

B E F O R E

THE HON'BLE MR. JUSTICE V.GOPALA GOWDA

WRIT PETITION NO.12564/1994

BETWEEN:

K.O. Chandru, major,  
S/o Obaiah Gowda,  
Singabidri Post,  
Thirthahalli Taluk,  
Mandagadde Hobli,  
Shimoga District.

.. PETITIONER.

(By M/s.Shetty & Hegde Associates)

AND:

1. Puttaswamy, major,  
S/o Savithamma,  
Keedgi Village,  
Mandagadde Hobli,  
Thirthahalli Taluk,  
Shimoga District.

2. The Land Tribunal,  
Thirthahalli Taluk,  
Shimoga District.

3. The State of Karnataka,  
rep. by its Secretary,  
Revenue Dept., M.S. Bldg.,  
Bangalore - 1.

.. RESPONDENTS.

(By Sri.K.T. Mohan, Adv. for R1)  
Mrs.Bharathi Nagesh, HCGP for  
R2 & R3)

This writ petition filed under Arts.226 and 227 of the Constitution praying to quash the order of R2 dt.7.5.93 vide Annex-A and direct R2 to grant occupancy rights in respect of the land in question, in favour of the petitioner.

This petition coming on for hearing this

day, the Court made the following:


O R D E R

This petition is filed by the applicant claiming occupancy rights in respect of the land bearing Sy.No.59/1 measuring 1 acre 15 guntas of land and farm house and Sy.No.63 measuring 2 acres 20 guntas of Singnabidari Village of Thirthahalli Taluk of Shimoga Dist. The application filed by the petitioner was earlier rejected by the Tribunal against which he approached this Court by filing Writ Petition No.2743/79. Same came to be allowed and the matter was remitted back to the Tribunal for fresh consideration after giving an opportunity to both the parties.

2. As per the directions issued by this Court in the said writ petition, the land Tribunal conducted an enquiry and gave opportunity to both the parties. On the basis of the evidence on record, the Tribunal has passed the impugned order rejecting the claim of the petitioner.

3. Aggrieved by the said order, the petitioner is before this Court again urging that, the order of the Tribunal is vitiated

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for non-consideration of evidence on record. Therefore there is an error apparent on the face of the record. Hence, the impugned order is liable to be quashed. Learned counsel appearing for the petitioner submits that, the findings recorded by the Tribunal are not correct and it has proceeded to give a finding based on facts mentioned in Form No.7. The boundaries of the lands were not mentioned in the application and therefore, the description of the lands was not proper. Therefore, the learned counsel submits that, the findings of the Tribunal are not tenable in law. Further, the learned counsel for the petitioner elaborating his submission contends that, the Tribunal has failed to consider the fact that, the petitioner has been in occupation and enjoyment of the lands in question at the relevant time namely immediately prior to 1.3.1974 & as on 1.3.1974 hence the lands are tenanted. Therefore, the findings of the Tribunal are erroneous in law as it has failed to take into consideration the legal evidence placed on record in support of the claims of the petitioner. It is further contended that, the findings of the land Tribunal

are also bad in law for the reason that, the claim of the petitioner has been rejected on the ground that the petitioner had not impleaded the real owner of the lands in question in the proceedings before the Tribunal and he has impleaded the name of Savithramma who is either proper or necessary party to the proceedings. The claim of the petitioner is that, Savithramma has executed a gift deed in favour of her daughter Pushpavathi and son-in-law Pampayya Gowda.

4. Further, the Tribunal has erred in not taking into consideration the documentary evidence namely the lease deed said to have been executed that the lands were leased in favour of the father of the petitioner which was executed by the father of first <sup>respondent</sup> ~~respondent~~ Sri Parameshwara Gowda. Further, the Tribunal has gravely erred in not taking into consideration the rebuttal evidence placed on record to show that entries made in the RTC extracts are not correct entries.

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5. Per contra, the learned counsel Mr.K.T.Mohan appearing for the landlord first respondent herein sought to justify the impugned order passed by the Tribunal contending that, the findings recorded by the Tribunal are based on legal and valid evidence on record. He further submits that, Tribunal has passed a well considered order by taking into consideration the evidence on record and has assigned valid and cogent reasons in the impugned order while rejecting the claim of the petitioner. Further, he would submit that, the petitioner has not made out a ground showing that, the findings of the Tribunal are either perverse or erroneous in law. The learned counsel further submits that, the impugned order passed by the Tribunal is legal and valid as the same has considered all the relevant aspects of the matter with regard to the lease deed, RTC entries and the evidence on record.

6. I have perused the averments and grounds urged in the writ petition. Heard the learned counsel appearing for the petitioner and the first

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<sup>N</sup>  
~~the~~ respondent. The Tribunal has taken all the relevant aspects of the case and it has given its findings holding that the petitioner has not proved his right of tenancy in respect of the lands in question, and it has recorded a finding<sup>N</sup> holding that, immediately prior to 1.3.1974 and as on 1.3.1974 the lands in question were not tenanted and therefore, the petitioner is not a tenant and consequently the claim of the petitioner for grant of occupancy rights was rejected. The submission of the learned counsel that, the Tribunal had given sufficient and adequate opportunity to the petitioner to prove his case after the matter was remitted back to it by this Court in the previous writ proceedings but the same was not availed by him is well founded. The Tribunal has recorded a finding for having not accepted the lease deed by giving more than one reason. The learned counsel submits that, lease deed was executed by the father of the first respondent in favour of the father of the petitioner, the contents of the documents were required to be proved by

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examining the witnesses to the said document. The Tribunal has considered that aspect of the matter and given a finding that lease deed is not proved. Further, the Tribunal has recorded a finding based on the entries in the RTC extract in the relevant year in the name of the first respondent in respect of the lands in question. Presumptive value to be attached under Sec.133

of the KLR Act, 1964 in respect of the RTC records <sup>the Tribunal</sup> has <sup>the same</sup> been taken into consideration and has <sup>it</sup> been considered <sup>the evidence on record it has</sup> and <sup>appreciated the same & it has come to the conclusion that</sup> ~~thereby, the opinion~~ <sup>was that,</sup> as on the relevant date, the petitioner was not in possession of the lands in question as tenant. Therefore, the findings recorded by the Tribunal are based on the ~~only~~ <sup>only</sup> documentary evidence on record before it. The petitioner has not placed any rebuttal evidence on record to show that the entries in the RTC recorded for the relevant period in respect of the lands in question are not correct.

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7. In this view of the matter, this Court is very slow in interfering with the order passed by a fact finding authority i.e. Tribunal unless it is made out that the order passed by it suffers from either error apparent on the face of the record or same was passed by the Tribunal without jurisdiction. In this case, either of the grounds exist. Hence, I pass the following order:

Writ Petition is dismissed.

Under the facts & circumstances of the case, no costs. Learned Addl. Govt. Advocate is permitted to file memo of appearance within four weeks.

Sd/-  
JUDGE

Sk/-

